

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
 WASHINGTON, D.C. 20554

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JAN 29 2002

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of )

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 Amendment of Section 73.606(b),  
 TV Table Allotments,  
 Television Broadcast Stations.  
 (Vernal and Santaquin, Utah, and  
 Ely and Caliente, Nevada)

)  
 )  
 ) MM Docket No. 01-323  
 ) RM-10337  
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To: Chief, Mass Media Bureau

**REPLY COMMENTS**

Ronald L. Ulloa ("Ulloa"), a member of Provo Broadcasting, LLC,<sup>1</sup> in his individual capacity, by his attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby respectfully submits these Reply Comments in opposition to the television channel reallocation proposals advanced in the Commission's *Notice of Proposed Rule Making*, DA 01-2736, released November 23, 2001 ("NPRM").

The NPRM sought comment on a proposal to amend the TV Table of Allotments to remove proposed television service from the communities of Ely, Utah and Vernal, Nevada. The Commission's proposals are based on a Petition for Rule Making and supplemental materials filed by TV 6, L.L.C., the permittee of Station KBCJ(TV), Channel 6, Vernal, Utah, and Kaleidoscope Foundation, Inc., the permittee of Station KBNY(TV), Channel 6, Ely, Nevada

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<sup>1</sup> Provo Broadcasting, LLC is the permittee of a new television station to be operated on Channel 32 at Provo, Utah. Provo is in the immediate vicinity of Santaquin, Utah.

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(collectively, the “Petitioners”). Petitioners propose reallocation of NTSC television Channel 6 from Vernal to Santaquin, Utah (just south of Provo, Utah), and NTSC television Channel 6 from Ely to Caliente, Nevada (north of Las Vegas, Nevada) and modification of the construction permits for the Stations to specify Santaquin and Caliente, respectively, as the Stations’ communities of license.

In response to the NPRM, Petitioners filed comments supporting the reallocation proposal, and Ulloa, KM Communications, Inc. (“KM”), and Utah Television stations KSL-TV, KUED(TV) and KULC(TV), and Utah noncommercial/education FM Stations KBYU-FM, KCPW(FM), KPCW(FM), KOHS(FM), KPGR(FM), KRCL(FM), KUER-FM, KUSU-FM and KWCR-FM (“Utah TV/FM”) filed comments opposing the proposal. Ulloa fully endorses the comments of KM and Utah TV/FM, which, together with Ulloa’s comments, demonstrate that the reallocation proposal is at odds with FCC policies and the public interest. Ulloa now submits these Reply Comments in response to the comments filed by the parties.

In its comments, Petitioners claim that the proposed reallocations are in the public interest because they further the Commission’s top three priorities in television allocations. *See* Petitioners Comments at 2. This claim is wide of the mark.

In addition to relying on technical data that differs dramatically from that relied upon by the Commission,<sup>2</sup> Petitioners make the dubious claim that they need not conduct a white area gain and loss comparison at all because the proposed reallocations will not create white area. In support of this claim, Petitioners rely on *Farmington and Gallup, New Mexico*, 11 FCC Rcd 2357, 2360 (1996) (“*Farmington*”), for the proposition that unbuilt construction permits are not

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<sup>2</sup> *See* Petitioners Comments at 4, fn 3. The results of calculations performed by Commission’s correspond more closely to the results submitted by KM Communications, Inc. *See* KM Comments at 3.

considered “existing” stations for purposes of calculating white and/or gray areas, and the removal of an unbuilt station does not create white/gray area but rather perpetuates it. *See* Petitioners Comments at 4, 7. However, there are important differences between the current proposal and the *Farmington* precedent.<sup>3</sup> These differences counsel against applying *Farmington* in the context of the current proposal, and undermine Petitioners’ claim that the proposed reallocations further the public interest.

First, there are no radio or television reallocation precedents, including *Farmington*, that support the kind of long-distance geographic shift from an underserved area to a more widely served urban area proposed by Petitioners. The modest geographic shifts approved in previous reallocation cases in no way countenance the sweeping 120 mile cross-state move proposed in the Santaquin reallocation. *See* Ulloa Comments at 3; Utah TV/FM Comments at 11.

Second, in *Farmington* the Commission based its approval of the reallocation from Gallup to Farmington in part on the availability of a vacant, unapplied for commercial allotment at Gallup. *See Farmington* at ¶¶20-21. In this case, with regard to the Santaquin reallocation, there are no vacant, unapplied for allotments available for Vernal. In its comments, KM notes that the only other allotment for Vernal is for NCE Channel 17, an application for which has been pending since filed by the University of Utah in 1996. *See* KM Comments at 4-5. KM further points out that if the NCE Channel 17 application is not granted, the NCE Channel 17 Vernal allotment will be deleted pursuant to the Commission’s DTV proceeding policies, and

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<sup>3</sup> Quite apart from the factors discussed herein that distinguish *Farmington* from the current reallocation proposal, there is something illogical about requiring parties to take into account the Commission’s television allotment priorities (e.g., white area service) in order to secure allotments in the first place, but then exempting parties from this requirement for proposed reallocations based on unbuilt construction permits.

Vernal will be left with only one allotment, the Channel 6 allotment that Petitioners now seek to remove. *See id.* at 6.

Third, *Farmington* was decided prior to the now ongoing conversion to digital transmission technology, and as such does not address important considerations raised by the current proposal. The proposed reallocations would undermine the Ely and Vernal communities' prospects for over-the-air digital television service by leaving them without a DTV allotment. As such, these reallocations are at odds with the Commission's efforts to establish digital television service as the sole form of television transmission service. In the context of broadcast television, the Commission now more than ever should be concerned about the loss of television service, and the Commission should adopt policies that promote rather than eliminate communities' prospects for local over-the-air digital transmission service. *Farmington* should not be relied upon where, as here, the stakes in free, over-the-air digital television service are implicated.

As demonstrated above, the circumstances involved in the current reallocation proposal differ substantially from those involved in *Farmington*, and, accordingly, *Farmington* should not control the Commission's current reallocation decision. Assuming then that Petitioners are denied the crutch of *Farmington*, and that the NCE Channel 17 Vernal application and allotment are deleted, under television allotment priority one the Channel 6 allotment for Vernal is preferable to a reallocation to Santaquin. The Vernal allotment provides first television reception service to a white area with 18,345 people and 8,810 square kilometers, whereas the proposed reallocation to Santaquin would provide first television reception service to a white area with 9,501 people and 4,033 square kilometers. *See* KM Comments at 6; NPRM at ¶6. Based on these same assumptions, the allotment for Vernal is also preferable to the reallocation to

Santaquin under television allotment priority two. Vernal has a greater population than Santaquin, and thus the existing allotment at Vernal provides first local service to a more populous community than would the proposed reallocation. *See* KM Comments at 6.

This analysis disproves Petitioners' claim that the reallocation proposal advances television allotment priorities one and two, and with them the public interest. It also undermines Petitioners' claim that grant of their petition is "virtually compelled" by *International Falls and Chisholm, Minn.*, 16 FCC Rcd 17864 (2001) ("*International Falls*"). *See* Petitioners Comments at 3. In *International Falls* the reallocation to Chisholm would serve a white area of 2,466 square kilometers and 6,060 people, whereas the existing allotment for International Falls would serve a white area of 2,422 square kilometers and 448 people. *See International Falls* at ¶3, n 6. In other words, the *International Falls* reallocation provided clear gains in white area service. By contrast, the current reallocation proposal provides no such gains, but instead potential losses in white area service. Petitioners are thus in error when they claim that, just as in *International Falls*, the Santaquin reallocation furthers priorities one and two. Furthermore, the reallocation in *International Falls* involved a 44.9 mile move,<sup>4</sup> a very modest geographic shift in comparison with the move proposed in the Santaquin reallocation of nearly three times that distance. In short, *International Falls* and the current reallocation proposal do not present the same factors for consideration, and Petitioners' claim that *International Falls* "virtually compels" grant of their petition is groundless.

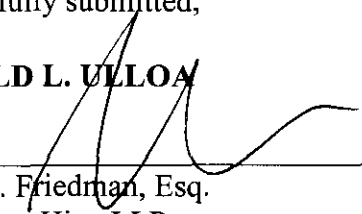
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<sup>4</sup> *See International Falls* at ¶2, n 4.

For the above-stated reasons, the Commission should not adopt the proposals advanced in the above-captioned NPRM.

Respectfully submitted,

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January 29, 2002

**CERTIFICATE OF SERVICE**

I, Barry A. Friedman, do hereby certify that I have, on this 29<sup>th</sup> day of January 2002, served a copy of the foregoing, "Comments In Opposition" upon the following parties by first-class mail, postage prepaid:


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